



University of California Lawrence Berkeley National Laboratory

GENERAL PROVISIONS FOR STANDARD RESEARCH SUBCONTRACTS

CLAUSE 1 - DEFINITIONS

As used herein, the following terms shall have the indicated meanings:

- "Government" means the United States Government;
- "DOE" means the U. S. Department of Energy;
- "University" means The Regents of the University of California, acting through the LBNL;
- "LBNL" means the Lawrence Berkeley National Laboratory;
- "Patent Counsel" means the DOE Patent Counsel.
- "Subcontract" means this Subcontract with the University;
- The term "Subcontractor" means the party who has entered into this Subcontract with the University;
- The lower case term "subcontractor" means the Subcontractor's subcontractor(s).

CLAUSE 2 - SCOPE OF SUBCONTRACT

The scope of the Subcontract shall be limited to the acquisition of research, development, or demonstration work.

The Subcontract is entered into as a subcontract under the University's Prime Contract No. DE-AC02-05CH11231 with the Government, represented by the DOE, for management and operation of the LBNL and the performance of certain research and development work.

CLAUSE 3 - PUBLICATIONS

(a) The Subcontractor shall closely coordinate with the University's Technical Representative regarding any proposed scientific, technical or professional publication of the results of the work performed or any data developed under this Subcontract. The Subcontractor shall provide the University an opportunity to review any proposed manuscripts describing, in whole or in part, the results of the work performed or any data developed under this Subcontract at least forty-five (45) days prior to their submission for publication. The University will review the proposed publication and provide comments. A response shall be provided to the Subcontractor within forty-five (45) days; otherwise, the Subcontractor may assume that the University has no comments. Subject to the requirements of Clause 13, the Subcontractor agrees to address any concerns or issues identified by the University prior to submission for publication.

(b) Subcontractor shall acknowledge the University, and Government sponsorship of the work as appropriate, and shall include a statement that such sponsorship does not constitute endorsement by the University or the Government of the views expressed in the publication.

CLAUSE 4 - NOTICES

(a) The Subcontractor shall immediately notify the University's Procurement Specialist in writing of: (1) any action, including any proceeding before an administrative agency, filed against the Subcontractor arising out of the performance of this Subcontract; and (2) any claim against the Subcontractor, the cost and expense of which is allowable under the terms of this Subcontract.

(b) If, at any time during the performance of this Subcontract, the Subcontractor becomes aware of any circumstances which may jeopardize its performance of all or any portion of the Subcontract, it shall immediately notify the University's Procurement Specialist in writing of such circumstances, and the Subcontractor shall take whatever action is necessary to cure such defect within the shortest possible time.

CLAUSE 5 - ASSIGNMENTS

(a) This Subcontract may be assigned by the University to the U.S. Government or a successor-in-interest to the University.

(b) Except as to the assignment of payments due hereunder, the Subcontractor shall have no right, power, or authority to sell, mortgage, transfer, or assign this Subcontract, any portion hereof, any interest herein, or any claim hereunder, nor shall it allow or permit any other party or parties to have any interest in or use any part of the rights or obligations granted hereunder for any purpose whatsoever without the prior written consent of the University.

CLAUSE 6 - DISPUTES

(a) Informal Resolution

(1) The parties to a dispute shall attempt to resolve it in good faith, by direct, informal negotiations. All negotiations shall be confidential. Pending resolution of the dispute, the Subcontractor shall proceed diligently with the performance of this Subcontract, in accordance with its terms and conditions.

(2) The parties, upon mutual agreement, may seek the assistance of a neutral third party at any time, but they must seek such assistance no later than 120 days after the date of the University's receipt of a claim. The requirement to seek the assistance of a neutral third party may be waived or modified only with the consent of all parties. The parties may request the assistance of an established Ombuds Program, where available, or hire a mutually agreeable mediator, or ask the DOE Office of Dispute Resolution to assist them in selecting a mutually agreeable mediator. The cost of mediation shall be shared equally by both parties. If requested by both parties, the neutral third party may offer a non-binding opinion as to a possible settlement. All discussions with the neutral third party shall be confidential.

(3) In the event the parties are unable to resolve the dispute by using a neutral third party or waive the requirement to seek such assistance, the University will issue a written decision on the claim.

(b) Formal Resolution

(1) If a dispute has not been resolved by informal resolution, it may be submitted to binding arbitration upon agreement of both parties, by and in accordance with the Commercial Arbitration Rules of the American Arbitration Association (AAA). If arbitration is agreed to by both parties, such decision is irrevocable and the outcome of the arbitration shall be binding on all parties.

(2) Each party to the arbitration shall pay its pro rata share of the arbitration fees, not including counsel fees or witness fees or other expenses incurred by the party for its own benefit.

(3) Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction.

(c) Litigation

If arbitration is declined for such disputes, the parties may pursue litigation in any court of competent jurisdiction.

(d) Governing Law

This Subcontract shall be interpreted and governed in accordance with all applicable federal and state laws and all applicable federal rules and regulations.

CLAUSE 7 - RESPONSIBILITY FOR TECHNOLOGY EXPORT CONTROL

The parties understand that materials and information resulting from the performance of this Subcontract may be subject to export control laws and that each party is responsible for its own compliance with such laws.

CLAUSE 8 – COST ACCOUNTING STANDARDS (CAS) LIABILITY

(Applicable to Subcontracts exceeding \$500,000)

Clause 10 below incorporates into these General Provisions clauses entitled "COST ACCOUNTING STANDARDS" and "ADMINISTRATION OF COST ACCOUNTING STANDARDS." Notwithstanding the provisions of these clauses, or of any other provision of the Subcontract, the Subcontractor shall be liable to the Government for any increased costs, or interest thereon, resulting from any failure of the Subcontractor, with respect to activities carried on at the site of the work, or of a subcontractor, to comply with applicable cost accounting standards or to follow any practices disclosed pursuant to the requirements of such clause.

CLAUSE 9 – WORKER SAFETY AND HEALTH

(Applicable when the subcontract involves work to be performed on a University or Government site.)

Subcontractor and its lower tier subcontractors shall comply with the Department of Energy's Worker Safety and Health Program regulation, 10 CFR 851, which enforces worker safety and health requirements including, but not limited to, standards of the Occupational Safety and Health Administration as incorporated in the LBNL Worker Safety and Health Program at <http://www.lbl.gov/ehs/pub3000/>. Violations of safety and health provisions of 10 CFR 851 may subject Subcontractor and its lower tier subcontractors to penalties. Subcontractor and its lower tier subcontractors shall also follow the provisions of its Cal/OSHA mandated Injury and Illness Prevention Plan (IIPP) or equivalent and all LBNL safety procedures and policies communicated to it the Subcontractor.

Subcontractors shall ensure that those workers who require unescorted/unbadged access to the LBNL site complete the General Employee Radiation Training (GERT), as required by 10CFR835. The on-line training is available at <http://ehswprod.lbl.gov/EHSTraining/GERT/default.asp>.

Hard copies of the training information are available at the Site Access office in Building 65B and at http://www.lbl.gov/ehs/html/training_pdf/GERT_PDFONLY.pdf.

CLAUSE 10 – INJURY REPORTING

(Applicable to Subcontractors with ten or more employees working at University or Government-owned sites or facilities [herein called LBNL Site] except for work involving construction and contract labor when Subcontractor's employees receive specific task assignments from University employees.)

(a) Subcontractor shall report all injuries to Subcontractor's employees that qualify for inclusion on Subcontractor's Cal-OSHA log to the University within 10 days of occurrence of the injury. Subcontractor shall furnish a copy of its supplemental injury report form (OSHA form 101 or equivalent) for each such case. This report shall be mailed to the LBNL SAAR Office, Health Services, MS 26-109. In addition, serious injuries resulting in death or hospitalization shall be reported by telephone immediately to the LBNL Health Services Receptionist, (510) 486-6266.

(b) Subcontractor shall report to the University the hours worked by Subcontractor's employees on the LBNL Site on a quarterly basis. For each quarter, the hours worked shall be reported in writing no later than the 10th day of the month following the end of the quarter. This report shall be mailed to the LBNL SAAR Office, Health Services, MS 26-109.

CLAUSE 11 – LAWS AND REGULATIONS

The Subcontractor and its employees and subcontractors shall at all times comply with all applicable state and federal laws, ordinances,

statutes, codes, rules, and regulations, including, but not limited to, those relating to wages, hours, employment discrimination, immigration, and safety (including OSHA).

CLAUSE 12 – ENTIRE AGREEMENT AND ORDER OF PRECEDENCE

This Subcontract shall consist of the Subcontract document (including any signature page and schedule of articles), these General Provisions, and any other referenced or incorporated clauses, provisions, and documents, which is the entire agreement between the parties concerning the subject matter hereof and supersedes all prior proposals, representations, negotiations, or agreements, whether written or oral.

Any inconsistencies in the terms and conditions comprising the Subcontract shall be resolved by giving precedence in the following order: (a) the Subcontract document; (b) these General Provisions, including the FAR and DEAR clauses listed in the clause entitled *Clauses Incorporated by Reference*; (c) any specifications; (d) other documents listed in the Subcontract Article entitled *Incorporated Documents*, if any, in the order in which they are listed; and (e) any other referenced or incorporated clauses, provisions, and documents.

CLAUSE 13 – SECURITY REQUIREMENTS

(a) This Subcontract is intended for unclassified, publicly releasable research or development work. The University does not expect that results of the research project will involve classified information or Unclassified Controlled Nuclear Information (UCNI) (See 10 CFR part 1017). However, the University may review the research work generated under this Subcontract at any time to determine if it requires classification or control as UCNI.

(b) If, subsequent to the date of this Subcontract, a review of the information reveals that classified information or UCNI is being generated under this Subcontract, then the security requirements of this Subcontract must be changed. If such changes cause an increase or decrease in costs or otherwise affect any other term or condition of this Subcontract, the Subcontract shall be subject to an equitable adjustment as if the changes were directed under the Changes clause of this Subcontract.

(c) If the security requirements are changed, the Subcontractor shall exert every reasonable effort compatible with its established policies to continue the performance of work under the Subcontract in compliance with the change in the security requirements. If the Subcontractor determines that continuation of the work under this Subcontract is not practicable because of the change in security requirements, the Subcontractor shall notify the University's Procurement Specialist in writing. Until the University's Procurement Specialist provides direction, the Subcontractor shall protect the material as directed by the University.

(d) After receiving the written notification, the University's Procurement Specialist shall explore the circumstances surrounding the proposed change in security requirements and shall endeavor to work out a mutually satisfactory method to allow the Subcontractor to continue performance of work under this Subcontract.

(e) Within 15 days of receiving the written notification of the Subcontractor's stated inability to proceed, the University's Procurement Specialist must determine whether (1) these security requirements do not apply to this contract or (2) a mutually satisfactory method for continuing performance of work under this Subcontract can be agreed upon. If this determination is not made, the Subcontractor may request the University's Procurement Specialist to terminate the Subcontract in whole or in part. The University's Procurement Specialist shall terminate the Subcontract in whole or in part, as may be appropriate, and the termination shall be deemed a termination under the terms of the Termination for the Convenience of the Government clause.

CLAUSE 14 - CLAUSES INCORPORATED BY REFERENCE

The FAR and DEAR clauses listed below, which are located in Chapters 1 and 9, respectively, of Title 48 of the Code of Federal Regulations, are incorporated by this reference as a part of the

University's Purchase Order or Subcontract (hereinafter "Subcontract") as prescribed below. As used in the clauses, the term "contract" shall mean the Subcontract; the term "Contractor" shall mean the entity (hereinafter "Subcontractor") who entered into the Subcontract with the University; the term "subcontractor" shall mean the Subcontractor's subcontractor; and the terms "Government" and "Contracting Officer" shall mean the University, except in FAR clauses 52.227-1 & Alt. I, 52.227-2, and 52.227-14, and DEAR clauses 952.227-11, 952.227-13, and 970.5232-3, in which clauses "Government" shall mean the U. S. Government and "Contracting Officer" shall mean the DOE Contracting Officer for Prime Contract DE-AC02-05CH11231 with the University. As used in FAR clause 52.245-1, the terms "Government" and "Contracting Officer" shall mean the University, except with respect to title. As used in DEAR clauses 952-227-9 and 970.5232-3, the term "DOE" shall mean DOE and the University. The Subcontractor shall include the listed clauses in its subcontracts at any tier, to the extent applicable.

APPLICABLE TO ALL SUBCONTRACTS:

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| FAR 52.216-7 | ALLOWABLE COST AND PAYMENT (DEC 2002). For "31.2" in paragraph (a), substitute 31.3 in subcontracts with educational institutions and 31.7 in subcontracts with nonprofit organizations. |
| FAR 52.216-15 | PREDETERMINED INDIRECT COSTS RATES (APR 1998) Applies if the Subcontractor is an educational institution and predetermined indirect cost rates apply. |
| FAR 52.222-26 | EQUAL OPPORTUNITY (APR 2002) (Note: Download the EEO Poster at: http://www.dol.gov/esa/regs/compliance/posters/eo.htm) |
| FAR 52.222-50 | COMBATING TRAFFICKING IN PERSONS (APR 2006) |
| FAR 52.223-3 | HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA SHEETS (JAN 1997), with Alternate I (JUL 1995). Applies only if Subcontract involves delivery of hazardous materials. |
| FAR 52.225-1 | BUY AMERICAN ACT-SUPPLIES (JUN 2003) |
| FAR 52.225-13 | RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (FEB 2006) |
| DEAR 952.204-71 | SENSITIVE FOREIGN NATIONS CONTROLS (APR 1994) (See list at: www.lbl.gov/ufva) |
| DEAR 952.227-9 | REFUND OF ROYALTIES (FEB 1995), if "royalties" are paid under the Subcontract by the Subcontractor, or by a subcontractor at any tier |
| DEAR 952.227-11 | PATENT RIGHTS - RETENTION BY THE CONTRACTOR (SHORT FORM) (FEB 1995) Applies only if Subcontractor is a small business firm or a domestic nonprofit organization as set forth in 48 CFR 27.301. |
| DEAR 952.227-13 | PATENT RIGHTS – ACQUISITION BY THE GOVERNMENT (SEP 1997) |
| DEAR 952.227-84 | NOTICE OF RIGHT TO REQUEST PATENT WAIVER (FEB 1998) |
| FAR 52.227-1 | AUTHORIZATION AND CONSENT (JULY 1995), with Alternate I (APR 1984) |
| FAR 52.227-14 | RIGHTS IN DATA-GENERAL (JUN 1987), with Alternate V, and DEAR 927.409 paragraphs (a) and (d)(3). If delivery of Restricted Computer Software is required, then Alternate III shall apply. |

If delivery of Limited Rights Data is required, then Alternate II shall apply, with the following five purposes added at the end of paragraph (a) of the clause:

1. Use (except for manufacture) by other contractors;
2. Evaluation by non-government evaluators;
3. Use (except for manufacture) by other contractors participating in the Government's program of which the specific subcontracts is a part, for information and use in connection with the work performed under each subcontracts;
4. Emergency repair or overhaul work; and
5. Release to a foreign government, or instrumentality thereof, as the interests of the United States Government may require, for information or evaluation, or for emergency repair or overhaul work by such government.

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| FAR 52.227-16 | ADDITIONAL DATA REQUIREMENTS (JUN 1987) Applies to all Subcontracts except those with Universities or Colleges for \$500,000 or less. |
| DEAR 952.227-82 | RIGHTS TO PROPOSAL DATA (APR 1994), if the Subcontract is based upon a technical proposal. |
| FAR 52.229-10 | STATE OF NEW MEXICO GROSS RECEIPTS AND COMPENSATING TAX (APR 2003). Applies if any part of this Subcontract is to be performed in the State of New Mexico. |
| FAR 52.232-20 | LIMITATION OF COST (APR 1984), if the Subcontract is a fully funded, cost-reimbursement subcontract |
| FAR 52.232-22 | LIMITATION OF FUNDS (APR 1984), if the Subcontract is incrementally funded |
| FAR 52.242-15 | STOP-WORK ORDER (AUG 1989), with Alternate I (APR 1984) |
| FAR 52.245-1 | GOVERNMENT PROPERTY (JUN 2007) (with Alternate II if the Subcontract is with a nonprofit institution of higher education or nonprofit organization whose primary purpose is the conduct of scientific research) |
| FAR 52.246-9 | INSPECTION OF RESEARCH AND DEVELOPMENT (SHORT FORM) (APR 1984) |
| FAR 52.247-64 | PREFERENCE FOR PRIVATELY OWNED U.S.-FLAG COMMERCIAL VESSELS (FEB 2006), if the Subcontract involves ocean transportation of supplies other than "commercial items". |
| FAR 52.249-5 | TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (EDUCATIONAL AND OTHER NONPROFIT INSTITUTIONS) (SEP 1996) |
| DEAR 952.247-70 | FOREIGN TRAVEL (DEC 2000)) |
| DEAR 952.203-70 | WHISTLEBLOWER PROTECTION FOR CONTRACTOR EMPLOYEES (DEC 2000), if the Subcontract involves any work at a DOE owned or leased facility |
| DEAR 970.5208-1 | PRINTING (DEC 2000), if printing is required under the Subcontract |
| DEAR 970.5232-3 | ACCOUNTS, RECORDS, AND INSPECTION (DEC 2000) |

APPLICABLE IF THE SUBCONTRACT IS FOR \$10,000 OR MORE:

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| FAR 52.222-36 | AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (JUNE 1998) |
| FAR 52.222-21 | PROHIBITION OF SEGREGATED FACILITIES (FEB 1999) |

APPLICABLE IF THE SUBCONTRACT IS FOR \$25,000 OR MORE:

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| DEAR 970.5223-4 | WORKPLACE SUBSTANCE ABUSE PROGRAMS AT DOE SITES (DEC 2000), if the Subcontract involves any of the hazardous activities stipulated in 10-CFR 707.2. |
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APPLICABLE IF THE SUBCONTRACT EXCEEDS \$100,000:

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| FAR 52.203-6 | RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT (SEP 2006) |
| FAR 52.203-7 | ANTI-KICKBACK PROCEDURES (JULY 1995), excluding Paragraph (c)(1) |
| FAR 52.203-10 | PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997) |
| FAR 52.203-12 | LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (SEP 2005) |
| FAR 52.219-8 | UTILIZATION OF SMALL BUSINESS CONCERNS (MAY 2004) |
| FAR 52.219-14 | LIMITATIONS ON SUBCONTRACTING (DEC 1996), if the Subcontract results from a Small Business Set-Aside |
| FAR 52.222-04 | CONTRACT WORK HOURS AND SAFETY STANDARDS ACT – OVERTIME COMPENSATION (JUL 2005), if the Subcontract involves mechanics or laborers and is for other than “commercial items”. |
| FAR 52.222-35 | EQUAL OPPORTUNITY FOR SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (SEP 2006), if the Subcontract value is \$100,000 or greater. |
| FAR 52.222-37 | EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA AND OTHER ELIGIBLE VETERANS (SEP 2006), if the Subcontract value is \$100,000 or greater. |
| FAR 52.222-39 | NOTIFICATION OF EMPLOYEE RIGHTS CONCERNING PAYMENT OF UNION DUES OR FEES (DEC 2004) (Note: Download the “Beck” Poster at: http://www.olms.dol.gov) |
| FAR 52.223-14 | TOXIC CHEMICAL RELEASE REPORTING (AUG 2003) |
| FAR 52.227-2 | NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (AUG 1996) |
| FAR 52.229-3 | FEDERAL, STATE AND LOCAL TAXES (APR 2003) |
| FAR 52.247-63 | PREFERENCE FOR U. S.-FLAG AIR CARRIERS (JUN 2003), if the Subcontract involves international air transportation |
| DEAR 952.209-72 | ORGANIZATIONAL CONFLICT OF INTEREST (JUN 1997). Applies if the Subcontract involves any advisory and assistance services, as defined in FAR 2.101, in support of the research activities. The period of ineligibility shall be five years. |

APPLICABLE IF THE SUBCONTRACT EXCEEDS \$500,000:

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| FAR 52.219-9 | SMALL BUSINESS SUBCONTRACTING PLAN (NOV 2007), if the subcontract value exceeds \$550,000, unless the Subcontractor is a small business or there are no subcontracting possibilities. |
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| FAR 52.230-2 | COST ACCOUNTING STANDARDS (APR 1998), excluding paragraph (b). Applies to nonprofit organizations if they are subject to full CAS coverage as set forth in 48 CFR Chapter 99, Subpart 9903.201-2 (FAR Appendix B) |
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| FAR 52.230-3 | DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES (APR 1998), excluding paragraph (b). Applies to nonprofit organizations if they are subject to modified CAS coverage as set forth in 48 CFR Chapter 99, Subpart 9903.201-2 (FAR Appendix B) |
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| FAR 52.230-5 | COST ACCOUNTING STANDARDS – EDUCATIONAL INSTITUTION (APR 1998), excluding paragraph (b). Applies to educational institutions. |
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| FAR 52.230-6 | ADMINISTRATION OF COST ACCOUNTING STANDARDS (NOV 1999), unless the Subcontractor is an Educational Institution |
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| DEAR 952.226-74 | DISPLACED EMPLOYEE HIRING PREFERENCE (JUN 1997) |
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| DEAR 970.5226-2 | WORKFORCE RESTRUCTURING UNDER SECTION 3161 OF THE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1993 (DEC 2000) |
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APPLICABLE IF THE SUBCONTRACT EXCEEDS \$650,000:

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| FAR 52.215-10 | PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA (OCT 1997), if cost or pricing data is required. |
| FAR 52.215-11 | PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA-MODIFICATIONS (OCT 1997) |
| FAR 52.215-12 | SUBCONTRACTOR COST OR PRICING DATA (OCT 1997), if cost or pricing data is required. |
| FAR 52.215-13 | SUBCONTRACTOR COST OR PRICING DATA-MODIFICATIONS (OCT 1997) |

(END OF GENERAL PROVISIONS)